Internal Revenue Service

memorandum

CC:LA:TL-N-8199-97
SMunnerlyn

date:

to: Richard Little
Los Angeles Examination Division

from: SHERRI L. MUNNERLYN, Attorney
IRS District Counsel

ubject: Request For Meeting and Advice
Ozone Depleting Chemicals

In response to your request for advice as to how to handle issues raised during audits involving issues raised under I.R.C. §§ 4681 and 4682, the following memo is being provided to you.

In our meeting and in your written request for a meeting, you requested advice as to how to deal with the issue of the taxpayer's substantiating that imported products (which normally are considered to require ozone depleting chemicals be used in their manufacture or production) did not require the use of ozone depleting chemicals (ODC's) in the manufacturing process. To the extent the taxpayer establishes that the imported products did not use ozone depleting chemicals in their manufacturing process, there is no excise tax liability under I.R.C. §§ 4681 and 4682. Under the regulations, the taxpayer may provide a statement from the manufacturer to establish the weight of ODC's levels used in the manufacture of the products and the regulations provide that the representations of the manufacturer "may be sufficient and reliable information" to establish the ODC content.

In our meeting and conversations, concerns were raised over the credibility of information being provided by taxpayers pursuant to the regulations. The foreign manufacturers are not generally subject to United States laws, which raises issues as to the accuracy of information provided in letters from the manufacturers. During audits, taxpayers are also presenting form letters that resemble each other, raising additional credibility issues. In addition, many of the countries from which products are being imported are technologically behind the United States and it appears questionable that companies operating in these countries would be using some of the modern alternative production methods which the letters purport are in use.

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In response to the concerns raised by various Examination Division Offices, a letter was developed for use in these audits where the taxpayers maintain that ODC's were not used in the manufacturing process. The letter requires the taxpayer to provide a letter from the manufacturer that identifies the replacement technology in detail and when it began to be used. The letter must be an original, on the company's letterhead, and have an original signature by an officer of the corporation. The manufacturer must identify the business from whom the replacement technology was purchased and provide purchase invoices which establish the acquisition of the replacement technology. The letter must clearly

identify the products with respect to which no ODC's were used in the manufacture. In addition, the letter must be notarized or sealed by the foreign government official in charge of Trade/Commerce or by the U.S. Consulate.

It is the opinion of our office that the resolution of the issue of whether the taxpayer has substantiated that ODC's are not used in the manufacturing process must be decided on a case by case basis. Since the regulations sanction the taxpayer establishing ODC content of products with statements from the manufacturers, we recommend that in cases in which the taxpayers fully comply with providing information requested by the agent in the letter referred to above and where there is no other evidence present which raises genuine creditability issues that Exams accept the taxpayer's documentation as sufficient to prove that the imported products do not contain ODC's.

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In providing advice on this issue, our office has discussed the issue with our National Office. If you have any questions or need further assistance, please call Sherri L. Munnerlyn at (213) 894-4656.

Sincerely,

SHERRI L. MUNNERLYN